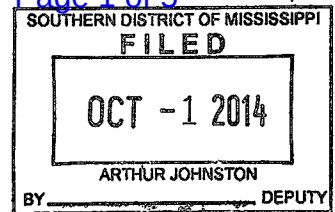


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION



MARILYN JOHNSON

PLAINTIFF

V.

CIVIL ACTION NO. 3:14cv00767 WHB-JCG

SHADY LAWN, LLC, D/B/A SHADY  
LAWN HEALTH AND REHABILITATION  
CENTER

DEFENDANTS

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NOTICE OF REMOVAL

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Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant Shady Lawn, LLC d/b/a Shady Lawn Health & Rehabilitation Center ("Shady Lawn") files this Notice of Removal of the civil action styled *Marilyn Johnson v. Shady Lawn, LLC, d/b/a Shady Lawn Health & Rehabilitation Center*, Cause No. 14-0071-CI, from the Circuit Court of Warren County, Mississippi, to the United States District Court for the Southern District of Mississippi, Northern Division. In support of this Notice, Shady Lawn states the following:

1. The Plaintiff filed this action on August 26, 2014. In the Complaint, the Plaintiff alleges that her mother, Mary Wright Johnson, received substandard nursing care during her residency at Shady Lawn in Vicksburg, Mississippi. According to the Complaint, Mary Johnson suffered injuries and ultimately died as a result of Shady Lawn's negligence.

2. Shady Lawn was served with a copy of the Complaint and Summons on September 2, 2014. This Notice of Removal is therefore timely pursuant to 28 U.S.C. § 1446(b).

3. Venue is proper in the United States District Court for the Southern District of Mississippi, Northern Division, because that is the district in which the state court action was filed. *See* 28 U.S.C. §§ 1446(a), 1446(b)(1).

4. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings, and orders served upon Shady Lawn are attached as composite Exhibit "A."

5. The Court has diversity jurisdiction over this matter under 28 U.S.C. § 1332 because (1) the amount in controversy exceeds \$75,000.00, exclusive of costs and interest, and (2) there is diversity of citizenship between the Plaintiff and Shady Lawn.

6. It is apparent that the amount in controversy requirement is met because the Plaintiff seeks to recover damages for her mother's death in addition to her mother's alleged "severe physical injuries, excruciating pain and suffering and extreme mental anguish." Complaint at ¶ VI. Further, the Plaintiff alleges that Ms. Johnson was hospitalized from August 21, 2013, to September 10, 2013, due to Shady Lawn's purported negligence, *id.* at ¶¶ IV-V, and she seeks to recover all of the "medical expenses incurred" as a result, *id.* at ¶ XXI. Finally, the Plaintiff seeks damages due to the "loss of society and companionship of her mother[.]" *Id.* Taken together, these allegations easily establish the requisite amount in controversy. *Menendez v. Wal-Mart Stores, Inc.*, 364 Fed. App'x 62, 67 (5th Cir. 2010) (holding that wrongful death plaintiffs' request for pain and suffering, mental anguish, and loss of consortium damages satisfied the amount in controversy).

7. Diversity of citizenship exists because the Plaintiff is alleged to be a citizen of Mississippi, *see* Complaint at ¶ 1, and Shady Lawn is not a citizen of Mississippi. As set forth in detail below, Shady Lawn is a Tennessee limited liability company whose sole member, Vanguard Healthcare, LLC, is a citizen of the state of Tennessee. No members of Vanguard Healthcare, LLC, reside in or are citizens of the state of Mississippi. Shady Lawn is, therefore, not a citizen of Mississippi. *See Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008) (holding that the citizenship of an LLC is that of all its members).

8. Again, Shady Lawn's sole member is Vanguard Healthcare, LLC, a Tennessee citizen. Vanguard Healthcare's members are William D. Orand, Sr., the Orand Limited Partnership, and the Ervin General Partnership.

9. William D. Orand, Sr. is a citizen of Tennessee.

10. The Orand Limited Partnership is a Tennessee limited partnership. Its partners are William D. Orand, Sr.; Pam Orand; William D. Orand, Jr.; and Bradford Orand. William D. Orand, Sr.; Pam Orand; and Bradford Orand are all citizens of Tennessee. William D. Orand, Jr. is a citizen of Texas. Thus, the Orand Limited Partnership is a citizen of Tennessee and of Texas. *Int'l Paper Co. v. Denkmann Assocs.*, 116 F.3d 134, 137 (5th Cir. 1997) ("For the purposes of diversity jurisdiction, the citizenship of a partnership is determined by reference to the citizenship of each of its partners.")

11. The Ervin General Partnership is a Tennessee limited partnership. Its partners are Linda M. Ervin; the Jere Suzanne Smothers Irrevocable Trust; the William J. Ervin Irrevocable Trust; the Jere Murphy Smothers 2008 Irrevocable Trust; and the Thomas Mann Smothers 2008 Irrevocable Trust. Linda M. Ervin is a citizen of Tennessee. Because J. Larry Williams is the trustee for each and every one of the aforementioned trusts, and further because he is a citizen of Tennessee, the trusts are Tennessee citizens. *See Mullins v. TestAmerica, Inc.*, 564 F.3d 386, 397 n. 6 (5th Cir. 2009), citing *Navarro Savs. Ass'n v. Lee*, 446 U.S. 458, 464 (1980) (holding that the citizenship of a trust is that of its trustee). Thus, because all of its members are Tennessee citizens, the Ervin General Partnership is a Tennessee citizen. *See Int'l Paper Co.*, 116 F.3d at 137.

12. For the reasons stated above, this Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332, and removal is proper under §§ 1441 and 1446.

13. In accordance with 28 U.S.C. § 1446(d), a Notice of Filing, along with a copy of this Notice of Removal, has been sent to all counsel of record and will be filed with the Clerk of Court for the Circuit Court of Warren County, Mississippi. A copy of the Notice of Filing is attached as Exhibit B.

**WHEREFORE**, Shady Lawn requests that the above-captioned action now pending in Warren County Circuit Court be removed to the United States District Court for the Southern District of Mississippi, Northern Division, and that the District Court assume jurisdiction over this lawsuit.

This, the 1st day of October, 2014.

Respectfully Submitted,

SHADY LAWN LLC d/b/a SHADY LAWN  
HEALTH & REHABILITATION CENTER

By its Attorneys,

BAKER, DONELSON, BEARMAN,  
CALDWELL & BERKOWITZ, PC

By:   
D. STERLING KIDD

W. Davis Frye (MB# 10671)  
D. Sterling Kidd (MB# 103670)  
BAKER, DONELSON, BEARMAN  
CALDWELL & BERKOWITZ, PC  
4268 I-55 North  
Meadowbrook Office Park  
Jackson, MS 39211  
Phone: (601) 351-2400  
Fax: (601) 351-2424

**CERTIFICATE OF SERVICE**

I hereby certify that I have forwarded, via U.S. Mail, first class postage prepaid, a true and correct copy of the foregoing *Notice of Removal* to the following counsel of record:

Dean Andrews, Jr.  
903 Jackson Street  
Vicksburg, MS 39183

This, the 1st day of October, 2014.

  
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D. STERLING KIDD